

Decision of the National Anti-Doping Appeals Panel

Held through teleconferencing on the 11th of February 2021 at 4pm

Appeal Case Reference: 001/2021/NADAP

Between

Anti-Doping Commission (Malta) - Respondent

Vs

Isabel Grech - Appellant

(ID Card no. 0070288M) – Member of the Malta Volleyball Association

The National Anti-Doping Appeals Panel (hereinafter referred to as the Appeals Panel) made up of the following:

- Dr Carmel Cascun BA FCII MJur LLD – Chairman
- Dr Sonia Consiglio BA LLD – Member
- Dr Marisa Cassar BPharm MBA PhD – Member
- Dr Kristina Pavia BA LLD – Secretary

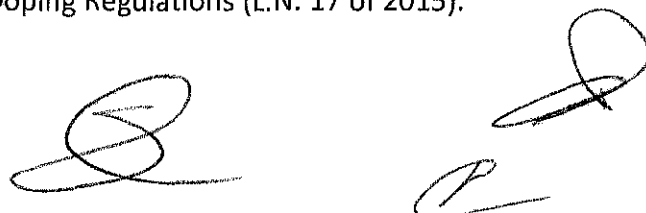
The Athlete, Ms Isabel Grech, was assisted by lawyers, Dr Michael Sciriha and Dr Franco Galea.

The Anti-Doping Commission was assisted by lawyer Dr Helena Caruana Zammit Lewis.

1. Preliminaries

1.1. The Appeals Panel considered the appeal petition filed by the Athlete on the 20th of January 2021 against the decision by the National Anti-Doping Disciplinary Panel (hereinafter referred to as the First Panel) on the 4th of January 2021 deciding that the Athlete had breached Reg 3(2)(c) and as sanctioned by Reg 11(3)(a) of the Anti-Doping Regulations (L.N. 17 of 2015) and Art. 10.3.1 of the WADA Code, by evading sample collection. Then the First Panel imposed a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of the 3rd February 2020, being the date of her provisional suspension.

1.2. This Appeals Panel has competence to hear and decide this suspension of ineligibility in terms of Regulation 14 of the Anti-Doping Regulations (L.N. 17 of 2015).



1.3. The Appeal Panel took note and reviewed the following documentation that were forwarded to the Panel by the Coordinator of the Anti-Doping Programme:

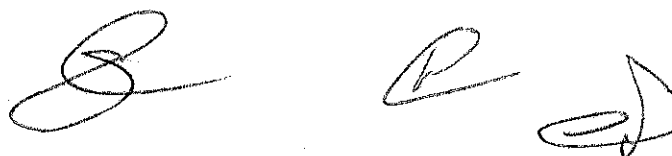
- a. A copy of the Authorisation Letter by the NADO to DCO to carry out the Doping Tests and official match team list for the game dated 2nd February 2020.
- b. The Doping Control Officer Report Form, Supplementary Report Form and documents relating to the participation of Isabel Grech dated 2nd February 2020.
- c. Letter of Notification of the Anti-Doping Rule Violation by NADO to Isabel Grech dated 4th February 2020.
- d. The letter by NADO to the National Association/Federation of the alleged breach by Isabel Grech dated 4th February 2020.
- e. The letter from the Athlete's advocates dated 7th February 2020.
- f. Letter of Acceptance for the Provisional Suspension signed by the Athlete dated 3rd February 2020.
- g. The Receipt of Delivery of Documentation (Appeal) dated 11th February 2020.
- h. The Request to the National Anti-Doping Disciplinary Panel to Schedule a Hearing submitted by the Anti-Doping Commission dated the 24th of February 2020.
- i. The Notification by the National Anti-Doping Disciplinary Panel to the Athlete to respond to the accusation brought by the Anti-Doping Commission dated 20th May 2020.
- j. The Notification of Hearing dated 21st October 2020.
- k. The Transcripts of the Hearing before the National Anti-Doping Disciplinary Panel dated 14th December 2020.
- l. The Decision of the National Anti-Doping Disciplinary Panel dated 4th January 2021.
- m. The Appeal filed by the Athlete.
- n. The Anti-Doping Commission's reply to the Athlete's appeal dated 25th January 2021.
- o. Various correspondence relevant to the case submitted by both parties.

1.4. The Notices of Hearing dated the 2nd of February 2021 were issued by the Appeals Panel to Isabel Grech and the Anti-Doping Commission to appear before the Appeals Panel.

1.5. A Copy of this Notice of Hearing was also forwarded to the Malta Volleyball Association, the Athlete's Advocates and the NADAP Members and Secretary.

1.6. The First Panel on the 4th of January 2021 decided that:

- a. The Athlete had breached Art. 3(2)(c) of the Anti-Doping Regulations (L.N. 17 of 2015) and Art. 2.3 of the WADA Code by evading sample collection; and



- b. Imposed *"a suspension of eligibility from any sports activities for a period of four (4) years commencing from the 3rd of February 2020, being the date of her provisional suspension."*

1.7. The Athlete brought a petition for appeal on the 20th of January 2021 on the grounds that:


- a. The First Panel *"made a wrong assertion of fact and law in holding that the athlete's actions were intentional"*, in terms of Article 11(2)(c) of Anti-Doping Regulations (L.N. 17 of 2015); and
- b. The First Panel incorrectly applied the law when it imposed the maximum punishment and had failed to take into consideration *"the mitigating factors pertaining to the athlete and the circumstances of the case."*

The Athlete requested the Appeals Panel to confirm the decision of the First Panel in relation to the Athlete's admission of guilt of the violation of Art. 3(2)(c) of the Anti-Doping Regulations (L.N. 17 of 2015) and to revoke the remainder of the decision in its entirety and impose a more equitable and just penalty taking into considerations the mitigating actions and circumstances of the case.

1.8. The Anti-Doping Commission replied to the Athlete's appeal petition on the 25th of January 2021 by confirming that both the Anti-Doping Commission and the Athlete agree that there was an anti-doping rule violation in terms of Art. 3(2)(c) of the Anti-Doping Regulations (L.N. 17 of 2015). Additionally, the Anti-Doping Commission agreed with the First Panel's decision on the 4th of January 2021 that the anti-doping rule violation committed by the Athlete was intentional and that the Athlete's refusal *"of the sample collection has taken place without a compelling justification."* Thus, the Anti-Doping Commission requested the Appeals Panel to uphold, in its entirety, the decision of the First Panel of the 4th January 2021.

2. Considerations by the Appeal Panel

- 2.1 The Panel noted that the athlete, Ms Isabel Grech, did not contest that she evaded sample collection 'in-competition after a Volleyball match on the 2nd February 2020. This notwithstanding due notice and explicit warning by the Doping Control Officer as to what likely would be the consequence if the athlete persisted in her refusal to submit to a sample collection.
- 2.2 Not submitting to a sample collection is in itself an anti-doping violation in breach of Reg 3(2)(c) of LN 17 of 2015 which, under Reg 11(2), is punishable by a period of ineligibility ranging between four (4) years and two (2) years, the latter in the event it is established that the anti-doping rule violation was not intentional.



- 2.3 The members of this Panel have discussed and reflected on the issue as to whether in this instance the athlete did what she did intentionally or not. In their opinion the circumstances and the behaviour of the athlete at the material time when she was asked to provide a sample, point towards the direction that she was fully aware of the consequences of her actions even when she was made explicitly aware of the potential aftereffects. This is well recorded in the DCO report form dated the 2nd February 2020 and which was not challenged by the athlete.
- 2.4 Taking into account the age and level of education of the athlete, the Panel is unable to accept that the athlete was not aware of the consequences of her refusal to comply with the direction given by a duly authorised Doping Control Officer. It cannot be believed that after some twenty (20) years involved in or playing volleyball that athlete was not cognisant of the existence of Anti-Doping Rules including the requirement to ask for therapeutic use exemption which she failed to make use of.
- 2.5 During the appeal proceedings the capable lawyers of Ms Grech made reference to the appeal case ADC Vs Mula. This Panel feels that that the circumstances of that case was substantially different from the present one. In that instance the athlete did agree to submit to the sample collection, but due to some physical reason the athlete could not produce a sample. Even though Mula was found in violation of Reg 3(2)(a) and punished accordingly, the Appeal Panel held he should benefit from mitigating circumstances. Undoubtedly the situation in this present case is different.
- 2.6 Moreover, the Panel did not fail to observing that the athlete, at the material time, did not immediately disclose the taking of the medicine to the DCO a few day before the match, when requested to submit to the anti-doping sample taking. Was the athlete then trying to conceal something?! The disclosure was made, or rather probably had to be made, to the Anti-Doping Commission after the suspension and during the subsequent internal representation. Again, in the opinion of the Appeal Panel, this 'late' disclosure did not eradicate the intentional element of the breach violation as required by Reg 11(2) of LN 17 of 2015.
- 2.7 The athlete's behaviour, and the adjoining circumstances, convinced this Appeal Panel that on the 2nd February 2020 the athlete had engaged in a conduct which she manifestly decided to disregard even though she was informed that there was a significant risk that her conduct might result in an anti-doping rule violation. And hence the period of ineligibility of four (4) years, in the opinion of this Appeal Panel does not merit any reduction.
- 2.8 In arriving at its conclusion, the Appeal Panel also sought guidance from the case William Brothers Vs Federation Internationale de Notation (FINA) awarded on the 21th March 2017 [Arbitration CAS 2016/A/4631]. Similar to the Appellant in that case, Grech revealed no compelling justification to evade or refuse sample collection.

Apart from the fact that William Brothers had been impacted by a difficult medical history from a very young age, also the DCO's response was considered inadequate. On this basis a reduced period of ineligibility was deemed justifiable. However, the DCO's notification and warning to Ms Grech at the material time was exemplary.

3. The Decision

Therefore, on the basis of the above the National Anti-Doping Appeals Panel is hereby determining this appeal:

- By confirming that the appellant Isabel Grech did breach Regulation 3(2)(c) of the Anti-Doping Regulations, 2015 (LN17 of 2015);
- By confirming in its entirety the decision delivered by the National Anti-Doping Disciplinary Panel of the 4th January 2021 (Case Ref: NADDP 20210104) which imposed upon the appellant Isabel Grech a suspension of ineligibility from any sport activities for a period of four (4) years commencing from the 3rd February 2020.

A copy of the decision is being forwarded to the Athlete, the Anti-Doping Commission (Malta) the Malta Volleyball Association and the Secretary of NADAP.

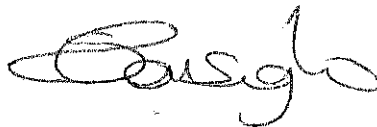
Dr Carmel Cascun – Chairman



Dr Marisa Cassar – Member



Dr Sonia Consiglio – Member



Dated: 28th February, 2021